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DIGEST OF RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

PENCE *v.* TIDEWATER TOWNSITE CORPORATION.

June 10, 1920.

[103 S. E. 694.]

1. Deeds (§ 155*)—Conditions Subsequent Not Favored.—Conditions subsequent, tending to destroy estates, are not favored in law, and must have been created by express terms or clear implication, to work a forfeiture of the title; but where it is the clearly expressed intention of the parties to create an estate upon a condition subsequent, the courts must give effect to such intention.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 440; 3 Va.-W. Va. Enc. Dig. 51.]

2. Deeds (§ 155*)—Provision for Reversion for Failure to Perform a Condition Subsequent.—Provision requiring grantee to erect building to cost a certain sum of money on the land within specified time, and providing for reversion of title upon his failure to do so, held a condition subsequent.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 440.]

3. Equity (§ 24*)—Meaning of "Forfeiture" Stated.—The loss of an estate in consequence of the doing or omission of some act constitutes a "forfeiture," within the rule that equity will not affirmatively assist in the enforcement of a forfeiture (citing 3 Words and Phrases, First Series, p. 2893 et seq., and Second Series, vol. 2, p. 611).

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 166.]

4. Equity (§ 24*)—Function of Equity as to Enforcement of Forfeitures.—Unless requisite to the accomplishment of complete justice in a case in which jurisdiction has been properly acquired on some other grounds, equity will have nothing to do with the enforcement of penalties and forfeitures; the function of equity in such case being to relieve against the enforcement, where the circumstances warrant equitable interference.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 173.]

5. Deeds (§ 168*)—Remedy for Breach of Condition Subsequent Is Ejectment Action.—Breach of condition subsequent does not entitle grantor to annulment and rescission of deed in a suit in eq-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

uity, since under Code 1919, § 5530, grantor has an adequate remedy at law in the form of an action in ejectment.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 443, 444.]

6. Deeds (§ 168*)—Ejectment Proper Action for Enforcement of Forfeiture.—Generally plaintiff in ejectment must be clothed with the legal title when he brings his suit, but such rule is not applicable to an action for enforcement of a forfeiture for breach of condition subsequent; ejectment having been fixed as the appropriate remedy for such breach by Code 1919, § 5:30, notwithstanding the estate remains in the grantee until the forfeiture is consummated.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 443, 444.]

7. Deeds (§ 168*)—Grantor Can Not Bring Suit to Quiet Title on Breach of Condition Subsequent.—Grantor's suit to annul deed for grantee's breach of condition subsequent cannot be treated as a suit to remove a cloud from the title, since grantor, having neither legal nor equitable title, does not fall within the class of persons who may bring a suit to quiet title, either under the original equitable doctrine governing such suits, or under Code 1919, § 6248, having nothing but a right of action until consummation of forfeiture.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 443, 444.]

8. Appeal and Error (§ 1107*)—Court Will Remand, to Transfer Case to Law Side, Though Statute Authorizing Transfer Took Effect after Judgment below.—In equity action, appellate court, in reversing decree for complainant on ground that it had an adequate remedy at law, will remand case, under Code 1919, § 6365, to lower court, with instructions to transfer cause to the law side for appropriate amendment of pleadings and other proceedings, under section 6084, providing for transfer of causes from equity to law, and vice versa though the case was disposed of in lower court before latter statute became effective.

Appeal from Circuit Court, Lunenburg County.

Suit by the Tidewater Townsite Corporation against A. E. Pence. Decree for complainant, and defendant appeals.

Reversed and remanded, with directions.

W. E. Fowler, of Victoria, and *W. E. Nelson*, of Lunenburg, for appellant.

U. S. Turnbull, Jr., of Victoria, for appellee.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.